IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.O.C.P. No.1307 of 2006
Date of Decision:- 12.12.2006

Jiya Lal ....Petitioner(s)

through
Mr.Vipul Jindal, Advocate

vs.

K.S.Bhoria ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J. (ORAL)

The petitioner was convicted under Sections 302, 392/34 IPC and was sentenced to undergo life imprisonment for the offence under Section 302/34 IPC and 10 years rigorous imprisonment for the offence under Section 392 IPC. Both the sentences, however, were ordered to run concurrently.

The petitioner filed Crl.Misc.No.12868-M of 2003 for his release on the ground that he had already undergone about 15 years and 10 months of actual sentence. The above-stated petition was contested by the State of Haryana on the plea that the petitioner was required to undergo a total sentence of not less than 20 years out of which there must be 14 years of actual sentence. The aforesaid plea was based upon the policy decision taken by the State Government.

A Division Bench of this Court vide order dated 28.7.2006, though upheld the aforesaid policy decision, however, upon interpretatioon thereof, directed that the petitioner be released as he had undergone 14 years

custody including the parole/remissions. Notice of the fact that the policy regarding pre-mature release and grant of remissions, itself was under challenge before the Hon'ble Supreme Court in the case of **Anil Sharma vs. State of Haryana** (C.W.P.(Crl.) No.135 of 2003), was also taken by this Court.

Alleging non-compliance of the above-stated order, this contempt petition has been filed.

In response to the show cause notice, the respondent took the plea that the matter was still sub-judice before the Hon'ble Supreme Court and in case the policy decision taken by the State Government for granting remissions/pardon is disapproved by the Hon'ble Supreme Court, the petitioner will have to undergo 20 years of actual sentence.

In deference to the above-mentioned order dated October 31, 2006, the respondent has now passed an order dated 11.12.2006 whereby the petitioner has been ordered to be released, however, subject to furnishing adequate bonds and/or final outcome of the pending SLP in the Hon'ble Supreme Court.

The aforesaid order having been passed, learned counsel for the petitioner now contends that the petitioner has been kept in "illegal custody" for some time and, therefore, adequate compensation for the excessive imprisonment which he has been compelled to undergo, should be awarded.

After hearing learned counsel for the parties, I am of the considered view that the claim for award of compensation is totally frivolous and liable to be rejected outrightly. The petitioner was sentenced for committing one of the most heinous crimes under Section 302 read with

Section 392 IPC and ordinarily ought to have been made to undergo rigorous imprisonment for a period of 20 years but for the Government Policy which symbolizes the King's supremacy in a Colonial era and, *prima facie,* has no sanctity in a society governed by the principle of "equality" and rule of law. In such a case, the petitioner's retention in custody despite the orders of this Court to release him, *per se* is not a wilful and deliberate act of disobedience of the Court orders which may entitle him to seek damages in monetary terms. No compensation, thus, can be awarded to the petitioner.

Disposed of.

Rule discharged.

December 12, 2006 **(SURYA KANT)**
poonam **JUDGE**